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In the Supreme Court of the United States

OCTOBER TERM, 1984

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS

v.

STEPHEN J. ROY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether 7 U.S.C. 2025(e) and 42 U.S.C. 602(a)(25), which require all applicants for and recipients of benefits under the Food Stamp and Aid to Families with Dependent Children programs to provide their state welfare agencies with their social security numbers, violate the Free Exercise Clause of the First Amendment as applied to persons who hold a sincere religious belief that social security numbers are part of a "great evil" that should be avoided.

PARTIES TO THE PROCEEDING

In addition to appellant Heckler, the defendants named in the district court were John R. Block, Secretary of Agriculture, and Walter Cohen, Secretary of the Pennsylvania Department of Public Welfare.

In addition to appellee Roy, Karen Miller was a plaintiff in the district court.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the district court (App., *infra*, 1a-23a) is reported at 590 F. Supp. 600. A prior opinion of the district court (App., *infra*, 27a-35a) is unreported.

JURISDICTION

The judgment of the district court (App., *infra*, 26a) was entered on June 22, 1984. The federal appellants filed a notice of appeal to this Court on July 18, 1984 (App., *infra*, 37a). On September 11, 1984, Justice Brennan extended the time within which to docket this appeal to and including November 15, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1252. See *United States* v. *Lee*, 455 U.S. 252, 256 n.5 (1982).

STATUTORY PROVISIONS INVOLVED

At the time of the district court's decision in this case, Section 402(a)(25) of the Social Security Act, 42 U.S.C. 602(a)(25), provided:

> A State plan for aid and services to needy families with children must * * * (25) provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan.[1]

Section 16(e) of the Food Stamp Act of 1977, 7 U.S.C. 2025(e), provides in pertinent part:

> The Secretary [of Agriculture] and State agencies shall (1) require, as a condition of eligibility in the food stamp program, that each household member furnish to the State agency their social security account num-

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[1] The Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 *et seq.*, was signed into law on July 18, 1984. Section 2651(b)(1) of that legislation amended Section 402(a)(25) of the Social Security Act to read as follows (98 Stat. 1149):

> provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of this Act[.]

Section 2651(a) of the Deficit Reduction Act of 1984 (98 Stat. 1147), in turn added a new section (Section 1137) to the Social Security Act that establishes detailed requirements for the income and verification systems that states must use in administering various federal welfare programs. Section 1137(a)(1) of the Social Security Act now provides (98 Stat. 1147) that:

> [T]he State shall require, as a condition of eligibility for benefits under any program listed in subsection (b), that each applicant for or recipient of benefits under that program furnish to the State his social security account number (or numbers, if he has more than one such number), and the State shall utilize such account numbers in the administration of that program so as to enable the association of the records pertaining to the applicant or recipient with his account number[.]

The programs included in the expanded income and eligibility verification system established by the Deficit Reduction Act of 1984 are the Aid to Families with Dependent Children program, the Medicaid program, the unemployment compensation program of Section 3304 of the Internal Revenue Code (26 U.S.C.), the Food Stamp program, and any state program under a plan approved under Titles I, X, XIV, or XVI of the Social Security Act. Pub. L. No. 98-369, § 2651(a), 98 Stat. 1148-1149.

ber (or numbers, if they have more than one number), and (2) use such account numbers in the administration of the food stamp program.

STATEMENT

Appellees Stephen J. Roy and Karen Miller refused to comply with the requirement, contained in 42 U.S.C. 602(a)(25) and 7 U.S.C. 2025(e), that participants in two federal programs, the Aid to Families with Dependent Children program and the Food Stamp program, furnish their state welfare agencies with the social security numbers (SSNs) of the members of their household as a condition of receiving program benefits. Appellees contended that compliance with the SSN requirement as applied to their three-year old daughter, Little Bird of the Snow, would violate their religious beliefs and constitute an impermissible burden on their First Amendment right to freely exercise their religion. Because appellees refused to comply with the statutory requirement that they provide an SSN for Little Bird of the Snow, the Pennsylvania Department of Public Welfare terminated AFDC and medical assistance benefits payable to appellees on Little Bird of the Snow's behalf and instituted proceedings to reduce the level of food stamps being received by appellees' household. Appellees then commenced this action against the Secretary of the Pennsylvania Department of Public Welfare, the Secretary of Health and Human Services, and the Secretary of Agriculture, challenging the constitutionality of the SSN requirement as applied to themselves. The district court held that the SSN requirement is unconstitutional as applied to appellee Roy and enjoined the state and federal defendants from denying program benefits to appellees on account of their failure to provide an SSN for Little Bird of the Snow. The court also enjoined Secretary Heckler from "using or disseminating" the SSN already assigned to Little Bird of the Snow in response to an application made by her mother, appellee Miller, shortly after Little Bird of the Snow's birth.

At trial, appellees introduced evidence concerning Roy's religious beliefs, and the defendants introduced evidence explaining the purposes of the SSN requirement in the ad-

ministration of the AFDC and Food Stamp programs. That evidence may be summarized as follows.

A. Appellees' Challenge To The SSN Requirement

Appellee Roy is a Native American descended from the Abenaki Tribe.[3] Roy testified that he derives his religious beliefs "[p]artly from intuition, partly from hearing other Abenakis speak, partly from what [he] read about religious teachings" (5/17/84 Tr. 57, 64). The central tenet of Roy's beliefs appears to be the legend of Katahdin, which is about the "great evil." The "great evil" consists of three separate but related "evils." The first evil is the widespread use of computers, the second evil is people's casual acceptance of the widespread use of computers, and the third evil is the proliferation of weaponry that increasingly employs computer technology, thereby making the use of the weapons to kill people a "sterile" act. App., *infra*, 4a. The legend of Katahdin is "ancient," predating the arrival of the white man. It does not deal specifically with nuclear energy or computers, but Roy's "intuition" tells him that the legend would be concerned about computers and nuclear weapons. 5/17/84 Tr. 143-144.

Roy considers social security numbers to be part of the "great evil," apparently because they are "used by the computers" and therefore rob people's spirits in a manner similar to what non-Native psychologists would call "dehumanization" (5/17/84 Tr. 81-82). In addition, Roy believes that the evil of SSNs is related to their function as unique personal identifiers. He testified that an SSN would be used to rob Little Bird of the Snow "of her ability to have greater power in that this number is a unique number. * * * it's applied to her and only her; and being applied to her, that's what offends us, and we try to keep her person unique, and we try to keep her spirit unique, and we're scared that if we were to use this number, she would lose control of that and she would have no ability to protect herself from any

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[3] Appellee Miller is not an Indian by blood, did not testify at trial, and, so far as the record reflects, holds no religious beliefs relevant to this case. The government moved to have Miller dismissed as a plaintiff, but the district court denied the motion. 5/18/84 Tr. 40-41, 46-47.

evil that that number might be used against her" (*id.* at 78-79; see also *id.* at 115).

Roy testified that he objects not to all numbers (but see pages 6-7, *infra*) but just to "the manner [in which the SSN] is used because it represents a great evil to us" (5/17/84 Tr. 79). Roy has no specific religious objection to receiving numbered food stamps or numbered AFDC checks (*id.* at 92). On the other hand, Roy testified that he would be upset "to some degree" by the use of *any* sort of information that identified himself and his family as individuals (*id.* at 120). He also testified that he might be "a little" upset if he were to learn that the state welfare department uses a unique case number to identify Little Bird of the Snow (*id.* at 127).

Although the case was tried on the assumption that Little Bird of the Snow did not have an SSN and that it would violate Roy's religious beliefs to obtain one for her, it was learned on the last day of trial that she does have one.[5] Her mother, appellee Miller, applied for Little Bird of the Snow's SSN when the child was born, apparently without Roy's knowledge. When Roy received Little Bird of the Snow's social security card in the mail, he and Miller allegedly returned it to the Social Security Administration and asked that it be "revoked." Roy testified that the Social Security Administration advised him in writing that Little Bird of the Snow's SSN would remain "dormant," but Roy did not produce any correspondence to support his testimony. 5/22/84 Tr. 149-151.

Roy himself uses a social security number, as does Miller and their older daughter, Renee. Roy does not object to providing SSNs for himself, Miller, and Renee because all three acquired their numbers before Roy came to hold his current religious beliefs and therefore the spirits of all three have been sufficiently robbed that they can no longer be prepared for greater power. 5/17/84 Tr. 82-83, 116-117.

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[5] Roy was asked whether he ever told his attorney that Little Bird of the Snow already had an SSN. Roy stated that he had but seemed to be unsure whether the attorney was paying attention during their consultation. 5/22/84 Tr. 149-151.

With respect to Little Bird of the Snow, on the other hand, Roy believes that he can still prepare her for greater power and that her spirit has not yet been robbed by overuse of the SSN she acquired shortly after her birth. Roy believes that Little Bird of the Snow must decide for herself whether she wishes to use an SSN, but he does not know when she will be ready to make that decision or when he will discuss the matter with her. 5/17/84 Tr. 86, 124, 132-133, 138-139.

During the course of trial, Roy was asked about various alternatives to the use of an SSN for Little Bird of the Snow. The district judge explained his system of converting numbers into words as a device to remember telephone numbers; for example, the district judge remembers the telephone number of the Chief Judge of the District by calling him "Phillippino Ovenpot." 5/17/84 Tr. 147-148. Using this system, the judge asked Roy whether he would object to Little Bird of the Snow's being given the number 515-94-1802 as her SSN, which represented the judge's conversion of Little Bird of the Snow's name into a nine-digit number.[4] Although he saw "a lot of good" in the suggestion, Roy was unwilling to accept this alternative because the special number still would apply uniquely to Little Bird of the Snow. In addition, Roy felt that Little Bird of the Snow would have to have some say in the decision to accept or reject the judge's suggestion, but she is currently incapable of making such a decision. 5/22/84 Tr. 144-145.

Roy also was unwilling to select any other SSN from a group of numbers that the government could make avail-

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[4] A government witness testified that the number 515-94-1802 has not been assigned to anyone else and that the Social Security Administration occasionally assigns special numbers upon request. The witness did note that the number created by the judge, because of its first three digits, would normally be assigned to someone in Kansas rather than Pennsylvania, and that even in Kansas the number is approximately 30,000 numbers ahead of numbers currently being issued. Because computers are programmed to reject "impossible" account numbers, some sort of computer modification would have to be made so that the number 515-94-1802 would not be rejected. The witness did not testify, however, that any such modification would be impossible. 5/22/84 Tr. 56-58.

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able, and he testified that he would object to any other system of unique numerical identifiers (5/17/84 Tr. 126-127). The only alternatives acceptable to Roy were the use of his own SSN for Little Bird of the Snow or the use of her name alone (*id.* at 14, 90). Roy did not believe that the use of his SSN for Little Bird of the Snow would harm her because the number would not be unique to her (*id.* at 90), and he did not object to the use of her name alone because he believes that her name would protect her from any evil that might otherwise befall her while her records were being processed through the computer system (*id.* at 91-92).

B. The Role Of SSNs In The Administration Of The AFDC And Food Stamp Programs

The AFDC program, established by Title IV of the Social Security Act, 42 U.S.C. 601 *et seq.*, is a jointly-funded federal-state program. Its purpose is to encourage "the care of dependent children in their own homes or in the homes of relatives" by providing funds for the support of such children. 42 U.S.C. 601. Eligibility for the program is based on financial need. Dependent children and their parents or other caretaker relatives are eligible for a grant if their income and resources are less than a set minimum subsistence level. 42 U.S.C. 602(a)(7) and (18).

The purpose of the Food Stamp program, as established in the Food Stamp Act of 1977, 7 U.S.C. 2011 *et seq.*, is to "permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation." 7 U.S.C. 2011. The Food Stamp program is jointly administered by the state and federal governments. As is the case under the AFDC program, eligibility for the Food Stamp program is based on financial need. 7 U.S.C. 2014.

In order to receive benefits under either program, therefore, a household must establish its financial eligibility. To make possible the verification of income, resources, and other eligibility factors, and to aid in the detection of fraud, Congress has required benefit applicants and recipients to furnish the administering state agencies with the SSNs of each member of their household. 7 U.S.C. 2025(e); 42

U.S.C. 602(a)(25); see S. Rep. 93-1356, 93d Cong., 2d Sess. 49 (1974); H.R. Rep. 97-106, 97th Cong., 1st Sess. 58, 60 (1981). Congress has not chosen to require benefit applicants and recipients to furnish any other self-identifying information to their state welfare agencies; although state agencies commonly request additional information, the SSN requirement is the only information mandated by federal statute.[8]

As the record in this case reflects, the AFDC and Food Stamp programs are truly massive. In fiscal year 1981, an average of nearly four million families received AFDC payments each month. Affidavit of Harris G. Factor ¶ 3 [hereinafter cited as Factor Aff.]. These families included more than 11 million persons, of whom 7½ million were children. *Ibid.* In that same year, the federal government spent nearly $8 billion to fund AFDC programs in the states and other United States jurisdictions. Similarly, in fiscal year 1982, an average of approximately 20 million persons received food stamps each month. Affidavit of Virgil Conrad ¶ 3 [hereinafter cited as Conrad Aff.]. In that same year, the federal government spent approximately $11 billion on the Food Stamp program. *Ibid.*

The magnitude of these programs requires a computerized system based on unique identifiers such as SSNs for the management of data concerning benefit applicants and recipients. Requiring all applicants and recipients to provide SSNs serves a multitude of discrete purposes, only some of which need be noted here. First, the requirement enables state welfare agencies to verify applicants' resources and income. Factor Aff. ¶ 4; Conrad Aff. ¶ 9.[9] Ob-

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[8] Congress has authorized the use of photographic identification cards in the administration of the Food Stamp program. 7 U.S.C. 2020(e)(16). Congress has not made the use of such cards mandatory, however, choosing instead to leave the matter to the discretion of the Secretary of Agriculture. *Ibid.*

[9] State governments have a particularly strong incentive to employ SSNs in the administration of these programs because they are under a congressional mandate to reduce their payment error rates. 7 U.S.C. 2025(c)(2); 42 U.S.C. 603(i). Moreover, the federal government reduces the level of reimbursement to states when their payment error rates exceed a certain level. 7 U.S.C. 2025(a)-(d); 42 U.S.C. 603(i). On

taining applicants' SSNs is particularly necessary for achievement of this task because the records systems of other governmental entities and private entities that state welfare agencies consult to verify the assets and income of welfare applicants utilize SSNs for identification purposes. For example, many private and public institutions, including banks, businesses, hospitals, schools, and state and local service agencies, maintain their records based upon SSN identification. 5/18/84 Tr. 68-69, 81-83; 5/21/84 Tr. 151-153, 156, 179.

Second, the statutory SSN requirement is necessary in order to ascertain whether AFDC applicants are receiving other federal benefits that would render them ineligible for AFDC benefits or require a reduction in the level of AFDC benefits provided. 5/18/84 Tr. 62-63, 87-88. Similarly, SSNs are used to keep track of persons no longer entitled to receive food stamps because of past abuses of the program. 5/21/84 Tr. 153.

Finally, the SSN requirement is an essential tool in the government's efforts to combat welfare fraud and waste. A few examples will suffice. Upon learning of reports that many federal and military employees were receiving AFDC benefits, the Inspector General of the Department of Health and Human Services launched "Project Match" in 1977 to cross-check federal military and civilian employee rolls against state AFDC rolls. Initially, 26 states submitted computer tapes for this match, and 33,000 apparent matches were forwarded to the federal agencies for submission of payroll data. Approximately 33% of these cases were found to be overpaid or ineligible for benefits. Interjurisdictional matches were also undertaken in 1977 to match tapes from participating states against each other in

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the other hand, the federal government provides states with an incentive to improve the reliability of their programs by agreeing to pay a higher portion of the administrative costs incurred by a state in setting up a system that meets various federal standards, including such elements as cross-matching the income reports of welfare applicants and recipients against records of the Social Security Administration, state income tax records, vital statistics bureaus, and motor vehicle registrations. 7 U.S.C. 2025(g); 42 U.S.C. 602(a)(30), 603(a)(3)(B). See also 5/18/84 Tr. 59-62; 5/21/84 Tr. 169-171.

search of instances in which individuals might be drawing grants from two or more jurisdictions. Out of the initial 26 states that were matched in 1977, 9,000 individuals were identified as receiving duplicate welfare payments. A second interjurisdictional match of all 50 states identified an additional 8,000 individuals. The Inspector General of HHS estimated savings of $7.9 million in reduced and terminated AFDC payments in the first year following the federal employee and interjurisdictional matches. Factor Aff. ¶¶ 6, 7. Interjurisdictional matches have continued in subsequent years, and each year's match uncovers more fraud and abuse. Factor Aff. ¶¶ 8, 9. Interjurisdictional matches cannot be performed without SSNs because SSNs are the only common element in the data systems of the various states. 5/18/84 Tr. 76-80, 97-99, 111.[9]

SSNs are required for all members of a household, including children, because the various data banks that are consulted to verify eligibility and detect fraud may contain information about each member of the household. For example, children may have bank accounts in their own names, and their unearned interest income must be considered in determining a household's total income and resources. If the SSNs of only the parents were required, such information would go undetected. In addition, it is not uncommon for children to be improperly claimed as dependents by more than one household. Without an SSN requirement applicable to children, therefore, state welfare agencies would be unable to detect improper payments or cases in which benefits are sought on behalf of nonexistent children. 5/18/84 Tr. 100, 101-102; 5/21/84 Tr. 159.

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[9] Although certain types of interstate matches may be performed without SSNs, the reliability of those matches is significantly less than matches performed with SSNs. Duplication of names, misspellings, variations in the manner in which nonnumerical data are entered into computers, and various other factors all combine to reduce the effectiveness of any system of cross-checking that does not employ SSNs. 5/18/84 Tr. 95-97, 106-107; 5/21/84 Tr. 157.

C. The District Court's Decision

The district court issued an opinion (App., *infra*, 1a-23a) holding that the SSN requirement is unconstitutional as applied to appellee Roy. The court first held that the case was not moot despite the surprise discovery on the last day of trial that Little Bird of the Snow has had an SSN since birth (see page 5, *supra*). The court reasoned (App., *infra*, 11a) that, while Roy would have preferred that no SSN had ever been established for Little Bird of the Snow, "Roy sincerely believes that the spirit of Little Bird of the Snow has not been robbed by the mere establishment of a social security number for her," and that Roy "further believes that no substantial harm will befall Little Bird of the Snow until her social security number is 'used.'" Accordingly, the court concluded that appellees' desire to obtain welfare benefits without the government's using Little Bird of the Snow's SSN saved the case from mootness. *Id.* at 11a-12a.

The district court next concluded that Roy's beliefs concerning SSNs are religious in nature (App., *infra*, 13a-14a) and that they are sincerely held (*id.* at 14a-15a).[9] At the same time, the court found that the government's interest in maintaining the SSN requirement is "substantial" and "great" (*id.* at 15a, 18a). (The court previously had issued an opinion on the parties' motions for summary judgment in which it found that the governmental interest is "compelling" (*id.* at 32a). The court did not alter that con-

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[9] With respect to appellee Miller, the court stated (App., *infra*, 14a-15a):

> [B]ecause she did not testify at the trial of this case, we are unable to determine whether she sincerely holds religious beliefs identical or similar to those held by Mr. Roy. Plaintiff Miller does not claim that she has been denied cash assistance for Little Bird of the Snow but she contests Defendants Block and Cohen's threatened termination of food stamps for Little Bird of the Snow. We are hesitant to grant Miller injunctive relief against the threatened termination of food stamps in light of her failure to testify at trial. Nevertheless, it would be inequitable to hold that Plaintiff Roy need not provide a social security number for Little Bird of the Snow, while allowing the government to require Miller to provide a social security number for Little Bird of the Snow, thereby effectively denying Roy the relief he seeks.

clusion in its final opinion.) The court then stated that it would "consider this case under the reasonable less restrictive alternative standard" (*id.* at 18a); in other words, it would uphold the SSN requirement unless it were shown that the governmental interest could be served "by some reasonable less restrictive alternative" (*id.* at 32a).*

Although the district court stated (App., *infra*, 18a) that it would consider appellees' "interest as against the government's interest in this particular case as well as the government's interest in the social security number requirement as a general matter," in fact the court's analysis focused entirely on this particular case. Thus, the court stated that the government's *general* interest in maintaining the SSN requirement "does not appear to be threatened by the claim presented in this case *because the Plaintiffs' claim appears to be extremely unusual.*" *Ibid.* (emphasis added). Similarly, for its case-specific analysis, the court held that the government's interest "in avoiding a grant of an exemption to the social security number requirement to the Plaintiffs in this case is very small." *Id.* at 19a. The court summed up its conclusion as follows (*ibid.*):

> It appears to the Court that the harm the Government might suffer if the Plaintiffs prevailed in this case would be, at worst, that one or perhaps a few individuals could fraudulently obtain welfare benefits. Such a result would obtain only if (1) Little Bird of the Snow attempted fraudulently to obtain welfare benefits or someone else attempted fraudulently to obtain such benefits using Little Bird of the Snow's name *and* (2) identification procedures available to the Defendants that do not require utilization of a social security number failed to expose the fraud. This possibility appears to the Court to be remote.

In view of this conclusion, the district court enjoined defendants from denying benefits to appellees for Little Bird

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* The court derived this test from *Callahan* v. *Woods*, 736 F.2d 1269 (9th Cir. 1984), a case raising a nearly identical challenge to the SSN requirement. Although we believe that *Callahan* was wrongly decided, we have not sought review of that decision in this Court because the court of appeals' ruling is interlocutory.

of the Snow because of appellees' failure to provide an SSN for Little Bird of the Snow (App., *infra*, 21a). The court also enjoined Secretary Heckler from "using or disseminating" the SSN already assigned to Little Bird of the Snow (*id.* at 22a) and ordered the Secretary to "notify any agency, individual, business entity or other third party to which the number has been provided and demand that said agency permanently refrain from: (1) making any use of the number and (2) disseminating the number to any other agency, person, individual, business entity, or any other third party" (*id.* at 24a-25a). These injunctions are to remain in effect until Little Bird of the Snow's 16th birthday (*id.* at 22a). Finding that appellees have no current religious objection to the past establishment of an SSN for Little Bird of the Snow, the court denied their request that her SSN be "eliminated" (*id.* at 21a-22a). The court also denied appellees' claim for payment of past due benefits and for damages against the defendants in their personal capacities (*id.* at 22a-23a).

THE QUESTION IS SUBSTANTIAL

The district court has held unconstitutional as applied to appellee Roy the requirement that applicants for and recipients of AFDC and food stamps provide to their state welfare agencies a social security number for every household member who receives benefits. As the only requirement Congress has deemed necessary to impose on the way in which recipients of these benefits are identified, the statutory provisions at issue come to this Court with a heavy presumption of constitutionality. The district court's invalidation of these provisions seriously jeopardizes the government's ability to combat fraud in federal welfare programs and generally to promote the administrative efficiency of such programs through the uniform application of a logical, neutral rule that undeniably serves a compelling governmental interest. The district court's ruling was based on a flawed premise—that the smaller the number of persons objecting to a neutral requirement on religious grounds, the greater their claim to an exemption from the requirement. No decision of this Court supports such a peculiar re-

sult. Instead, it is clear that, in the circumstances here presented, the individual's interest in religious liberty must yield to the greater interest of society in the efficient and effective administration of its welfare programs.

1. a. This Court has repeatedly emphasized that although "the Free Exercise Clause provides substantial protection for lawful conduct grounded in religious belief, * * * '[n]ot all burdens on religion are unconstitutional. . . . The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.'" *Bob Jones University* v. *United States*, No. 81-3 (May 24, 1982), slip op. 28 (quoting *United States* v. *Lee*, 455 U.S. 252, 257-258 (1982)).

In both *Bob Jones University* and *Lee*, this Court addressed the question presented here, namely, how to resolve the conflict between a requirement that serves a compelling governmental interest and the contrary dictates of a sincerely held religious belief. When such a conflict occurs, "[t]he remaining inquiry is whether accommodating the * * * belief will unduly interfere with fulfillment of the governmental interest." *United States* v. *Lee*, 455 U.S. at 259. If the belief "cannot be accommodated with that compelling governmental interest, * * * and no 'less restrictive means' * * * are available to achieve the governmental interest," the government's interest must prevail. *Bob Jones University*, slip op. 29 (citations and footnote omitted). As the Court concluded in *Lee*, 455 U.S. at 259 (footnote omitted):

> To maintain an organized society that guarantees religious freedom to a great variety of faiths requires that some religious practices yield to the common good. Religious beliefs can be accommodated, see, *e.g.*, *Thomas* [v. *Review Board*, 450 U.S. 707 (1981)]; *Sherbert* [v. *Verner*, 374 U.S. 398 (1963)], but there is a point at which accommodation would "radically restrict the operating latitude of the legislature." *Braunfeld* [v. *Brown*, 366 U.S. 599, 606 (1961)].

That point has been exceeded by the district court's decision in this case.

b. We do not contend that Roy's beliefs are not religious in nature, nor do we contend that his beliefs are not sin-

cerely held. By the same token, neither the district court nor appellees question the fact that the government has a compelling interest in the SSN requirement as a general matter. The dispute in this case is whether the "least restrictive means" inquiry is to be applied to the programmatic governmental interests of verifying eligibility, preventing and detecting fraud, and administering massive programs efficiently, or whether the Free Exercise Clause requires a case-by-case determination of each individual claim to an exemption. In our view, the district court erred in considering appellees' claim in isolation and in placing its primary focus on the number of persons who potentially might seek an exemption from the SSN requirement.[10] Instead, it should have focused on the programmatic considerations addressed by Congress in enacting the SSN requirement and Congress's judgment that there should be no exceptions to that requirement.

This Court's decision in *Lee* demonstrates the error of the district court's analysis. There, the Court rejected the claim of an Amish employer for an exemption from paying social security taxes for his Amish employees. The Court did not confine its analysis to the effect on the social security program of exempting only the Amish; if it had, the programmatic effect would have been beneficial because the Amish not only oppose paying into the social security system but also oppose receiving benefits, and benefit payouts far exceed contributions. See *Lee*, 455 U.S. at 262 (Stevens, J., concurring). Instead, the Court looked to the government's compelling interest in uniform administration of the social security program and tax collection in general and concluded that mandatory participation by all employers was essential to the fiscal vitality of the program. *Id.* at 258-260.

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[10] Though we do not believe that the number of persons seeking an exemption is relevant to the correct disposition of this case, we note that appellees' objections are not unique. See *Callahan* v. *Woods*, 736 F.2d 1269 (9th Cir. 1984); *Stevens* v. *Berger*, 428 F. Supp. 896 (E.D.N.Y. 1977); *Mullaney* v. *Woods*, 97 Cal. App. 3d 710, 159 Cal. Rptr. 268 (1979); *Atwood* v. *Idaho Dep't of Health & Welfare*, No. 82-2026 (D. Idaho filed May 23, 1983).

Like *Lee*, the earlier cases of *Braunfeld* v. *Brown*, 366 U.S. 599 (1961), and *Prince* v. *Massachusetts*, 321 U.S. 158 (1944), also demonstrate the impropriety of ignoring a legislative determination that individualized exemptions would undermine the purposes behind a neutral law of general applicability. In *Braunfeld*, the appellants were Orthodox Jewish merchants whose religious convictions required that their places of business remain closed on Saturdays. They sought an injunction to prevent enforcement against them of a state Sunday-closing law, on the ground that closing their businesses on Sundays interfered with their ability to earn a living. The Court rejected the claim, noting that "to permit the exemption might well undermine the State's goal of providing a day that, as best possible, eliminates the atmosphere of commercial noise and activity" (366 U.S. at 608).[11]

Prince likewise involved a state statute that imposed an absolute ban on the activity in which the appellants there sought to engage. The statute at issue was a child labor law forbidding children from engaging in street sales of magazines, newspapers, and other merchandise. Unlike the Jewish merchants in *Braunfeld*, whose religious faith was only indirectly burdened by the statute in question (see 366 U.S. at 605-607), the appellants in *Prince* were Jehovah's Witnesses whose religious faith specifically required that they engage in the activity the state sought to prohibit—street sales of their religious tracts. Nevertheless, the Court held that the statute was constitutional as applied to the appellants, even though there was no danger to the particular child in question, who had been closely supervised by her aunt.

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[11] The Court also noted that to permit the exemption might provide the Jewish merchants with a competitive advantage over other merchants who had no religious objection to the Sunday-closing law. *Braunfeld*, 366 U.S. at 608-609. A similar problem looms large in this case because the district court's decision effectively assures that the welfare applications of appellees and those who share their beliefs will not receive the same degree of scrutiny that all other applicants undergo.

These cases clearly demonstrate that when the legislature seeks to advance a compelling governmental interest through uniform application of a facially neutral requirement, it is not relevant that granting exemptions in rare cases might work only a minute or incremental interference with the governmental interest. This analysis compels reversal of the decision below. Achievement of the compelling governmental interest in preserving and promoting the fiscal integrity of the AFDC and Food Stamp programs is dependent upon the proper verification of income and resources and the correct payment of benefits to needy individuals. Whether or not any one individual might seek to collect benefits to which he is not entitled is irrelevant; the pertinent point is that the programs as a whole cannot be managed effectively without the SSN requirement. Programs the size of the AFDC and Food Stamp programs cannot possibly be administered without the aid of computer technology, and computers communicate with each other in numbers. One who is opposed on religious grounds to computers and numbers might well find the SSN requirement objectionable, but no decision of this Court suggests that such an indirect burden on religious freedom is a sufficient basis for striking down a neutral procedural requirement that is undeniably essential to sound program administration.

Moreover, the decision below leads to absurd consequences. Essentially, the court has held that government must accommodate those individuals holding the most unique and idiosyncratic religious beliefs because the cost of exempting those few individuals from a facially neutral procedural requirement would be quite small. The logical corollary to this holding is that government may refuse to accommodate religious beliefs so widely held that the administrative burden and programmatic impact would be deemed too great. In essence, the right to the free exercise of religious beliefs would shrink as the number of persons who share those beliefs grows. Such a result defies common sense.

In addition, there would appear to be no limit to the "accommodations" that could be required of government under

the district court's analysis. For example, Roy objects to the use of computers but not strongly enough to protest issuance of his AFDC check by a computer. Another plaintiff, however, could insist that the government process his check manually or that he be paid in cash instead of by check. Viewing each case in isolation, as the district court's decision requires, the government would be obliged to accommodate these sorts of demands, because it unquestionably could do so in a handful of instances without undue burden or expense. Logic compels the conclusion that there are limits to the accommodations government is required to make in administering facially neutral program requirements, and those limits have been exceeded by the decision below.[18]

c. The present case can readily be distinguished from other cases in which this Court has required states to permit religious exemptions from otherwise applicable statutory requirements. *See Thomas* v. *Review Board*, 450 U.S.

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[18] Even if a case such as this were to be analyzed on an individual, rather than programmatic, basis, we submit that the district court erred in concluding that the government's compelling interest can be satisfied without requiring Roy to furnish an SSN for Little Bird of the Snow. There is something fundamentally wrong with the notion that an individual can claim an entitlement to government benefits while at the same time refusing to comply with that portion of the program designed to verify eligibility and most effectively detect fraud. If appellees wish to avail themselves of government benefits, the Free Exercise Clause does not stand as an obstacle to the government's ability to ensure, as effectively and efficiently as possible, that they are legitimately entitled to receive them. It is undisputed that the SSN requirement is by far the most effective means for achieving this compelling governmental interest, and appellees' suggested "alternatives" simply do not satisfy Congress's purposes. For example, the dual use of Roy's own SSN to identify himself and Little Bird of the Snow is inherently inconsistent with the role of SSNs as unique personal identifiers. The use of Little Bird of the Snow's name alone is likewise an ineffective alternative. Though her name is ostensibly unusual (but see *Arthur* v. *Washington State Dep't of Social & Health Services*, 19 Wash. App. 642, 648, 576 P.2d 901, 905 (1978) ("A name affords neither precision nor permanence. A social security number does.")), computer cross-matching by name is simply not as reliable as computer cross-matching by SSN, and in some cases it is not even possible.

707 (1981); *Sherbert* v. *Verner*, 374 U.S. 398 (1963).[13] Both *Thomas* and *Sherbert* involved applicants for unemployment compensation who, as a result of having been denied benefits, were forced to choose between receiving no income or continuing to engage in employment-related activity that violated their religious beliefs. In both cases, this Court held that the states were required to accommodate the religious beliefs of the individuals involved.

In contrast to the present case, however, the states in *Thomas* and *Sherbert* could not demonstrate a compelling governmental interest. Compare *Thomas*, 450 U.S. at 719, and *Sherbert*, 374 U.S. at 406-409, with App., *infra*, 15a, 18a, 22a. Moreover, the statutes under consideration in *Thomas* and *Sherbert* explicitly permitted exemptions from their general requirements based on individualized determinations of "good cause."[14] Because the legislatures had clearly contemplated such exemptions under certain circumstances, the states were unable to persuade the Court that they had sought to accomplish their objectives in the least restrictive manner with respect to the individuals at hand. Thus, the statutes in *Thomas* and *Sherbert*, unlike the statutes here, provided by their own terms the necessary "play in the joints," *Walz* v. *Tax Comm'n*, 397 U.S. 664, 669 (1970), to allow for exemptions grounded in the Free Exercise Clause.

By contrast, the statutory provisions requiring applicants for AFDC payments and food stamps to provide social security numbers to their state welfare agencies do not permit exemptions for any reason. Moreover, the increas-

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[13] Interestingly, the district court did not explicitly rely on these cases or any other decision of this Court in support of its holding that the government's interest in enforcing the SSN requirement was outweighed by Roy's interest in the free exercise of his religious beliefs.

[14] Thus, the provisions of the South Carolina Unemployment Compensation Act at issue in *Sherbert* provided that employees were ineligible for benefits only if they "[have] failed, *without good cause*" to apply for, accept, or return to work. 374 U.S. at 400 n.3 (emphasis added). Similarly, in *Thomas*, the statute provided that an individual was ineligible for benefits if he "voluntarily left his employment *without good cause*." 450 U.S. at 710 n.1 (emphasis added).

ing importance that Congress attaches to the SSN requirement cannot be doubted. For example, the use of SSNs in the Food Stamp program was optional with the states until 1981 (see 7 U.S.C. (Supp. IV 1980) 2025(f)); in that year, Congress changed the pertinent statutory language from "may" (*ibid.*) to "shall" (7 U.S.C. 2025(e)). More recently, Congress expanded the number of programs to which the mandatory SSN requirement applies. See note 1, *supra*. It did so on the recommendation of the Grace Commission, which reported that computer matching employing SSNs "is the Federal Government's most cost-effective tool for verification or investigation in the prevention and detection of fraud, waste and abuse." 7 The President's Private Sector Survey on Cost Control, *Management Office Selected Issues, Information Gap in the Federal Government* 90 (1984); see also *id.* at 82-92; 7 The President's Private Sector Survey on Cost Control, *Report on Federal Feeding* 46-55 (1984). Accordingly, Congress has determined that the compelling governmental interest in verifying program eligibility and preventing welfare fraud cannot be reconciled with the granting of exemptions. That Congress might have written the statutes differently, to permit individually-determined exemptions, is irrelevant. See *United States* v. *Lee*, 455 U.S. at 260-261;[15] *Braunfeld* v. *Brown*, 366 U.S. at 606.[16] The district court erred in

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[15] In *Lee*, the Court noted that Congress had permitted an exception from the social security tax for self-employed Amish. 26 U.S.C. 1402(g). The Court declined to extend a similar exemption to Amish employers on constitutional grounds, reasoning that "Congress has accommodated, to the extent compatible with a comprehensive national program, the practices of those who believe it a violation of their faith to participate in the social security system." 455 U.S. at 260.

[16] The Orthodox Jewish merchants in *Braunfeld* objected to the fact that the Sunday-closing law there at issue did not permit exemptions for religious reasons. The Court noted that "[a] number of States provide such an exemption, and this may well be the wiser solution to the problem. But our concern is not with the wisdom of legislation but with its constitutional limitation." 366 U.S. at 608 (footnote omitted). In the present case, given the importance of having a nationally uniform method of identifying recipients of AFDC and food stamps, one might well question whether it would even be wise for Congress to provide exceptions. In any event, exceptions are not constitutionally required.

ignoring the legislative judgment in this regard and engrafting onto the statutes an unfounded exemption that cannot be reconciled with the underlying legislative purposes.

2. The district court's injunction is in any event overbroad. The court cited no legal basis to justify enjoining Secretary Heckler from "using or disseminating" Little Bird of the Snow's SSN and directing her to demand that all other entities, governmental and private, cease using Little Bird of the Snow's SSN. The Free Exercise Clause, even under the most expansive interpretation, only prohibits government from compelling an individual to think or act contrary to his religious beliefs; no decision of this Court holds that the Clause protects an individual against having his religious sensibilities offended by observing actions of government to which he objects. Cf. *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 485 (1982). Were the rule otherwise, those professing religious objections to the conduct of war or to the manner in which government spends tax dollars could assert a Free Exercise Clause violation based on nothing more than their observation of governmental action that they find offensive on religious grounds. This is simply not the law, and the district court's contrary ruling cannot be sustained.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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NOVEMBER 1984

APPENDIX A

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 83-1179
Complaint Filed 9/17/83
(Judge Muir)

STEPHEN J. ROY AND KAREN MILLER, PLAINTIFFS

v.

WALTER COHEN, ET AL., DEFENDANTS

[June 22, 1984]

OPINION

MUIR, District Judge.

I. INTRODUCTION.

Stephen J. Roy and Karen Miller refuse to use a social security number for their three-year-old daughter, Little Bird of the Snow, on the ground that doing so would be contrary to their native Abenaki Indian religious beliefs. As a result, the Defendants have terminated cash assistance and medical assistance benefits for Little Bird of the Snow payable to the Plaintiffs. They have also initiated proceedings to discontinue food stamps for Little Bird of the Snow. In this lawsuit, the Plaintiffs assert that the Defendants' refusal to provide them welfare benefits to which they would be entitled but for their failure to use a social security number for Little Bird of the Snow constitutes a violation of their right to free exercise of their religion under the first amendment to the United States Constitution. Defendant Margaret Heckler is the Secretary of the United States Department of Health and Human Services (HHS). Defendant John Block is the Secretary of the United States Department of Agriculture (USDA). Defendant Walter

Cohen is the Secretary of the Pennsylvania Department of Public Welfare (DPW). This case was tried by the Court sitting without a jury from May 17 through May 22, 1984. The following are the Court's findings of fact, discussion, and conclusions of law.

II. FINDINGS OF FACT.

1. Plaintiff Stephen J. Roy is an Abenaki Indian.

2. Mr. Roy's great-grandfather on his father's side was a tribal chief in the Abenaki tribe.

3. Mr. Roy's grandfather on his father's side was a full blooded Native American Abenaki.

4. Mr. Roy is registered as a Native American Indian with the Three Rivers Council.

5. Karen Miller is the wife of Stephen J. Roy.

6. Defendant Walter Cohen is Secretary of the Pennsylvania Department of Public Welfare ("DPW").

7. As Secretary of the Pennsylvania Department of Public Welfare, Defendant Cohen has overall responsibility for administration in Pennsylvania of the federal-state programs of Aid to Families with Dependent Children, 42 U.S.C. § 601, *et seq.*, Medical Assistance to families with dependent children, 42 U.S.C. § 1396 *et seq.*, and food stamps to low-income households, 7 U.S.C. § 2011, *et seq.*

8. Defendant Margaret Heckler is Secretary of the United States Department of Health and Human Services ("HHS").

9. As Secretary of HHS, Defendant Heckler has overall responsibility for administration of the federal-state programs of Aid to Families with Dependent Children and Medical Assistance to families with dependent children.

10. Defendant John Block is the Secretary of the United States Department of Agriculture ("USDA").

11. As Secretary of the U.S. Department of Agriculture, Defendant Block has overall responsibility for administration of the federal-state program of Food Stamps to low-income households.

12. In 7 U.S.C. § 2025(e) and 42 U.S.C. § 602(a)(38), Congress has specified that households participating in the federal food stamp program and the Aid to Families with

Dependent Children program furnish the Social Security Number ("SSN") of each member of the household.

13. Applicable regulations of both HHS and USDA (7 C.F.R. § 273.6; 42 C.F.R. § 232.10) reiterate that requirement which has been followed by the Commonwealth of Pennsylvania Department of Public Welfare.

14. Stephen J. Roy and Karen Miller have two children, Renee, age five, and Little Bird of the Snow, age three.

15. The Plaintiffs adhere to Native American tradition and culture and the religious beliefs embodied in that tradition and culture.

16. The Plaintiffs observe several cultural practices which have their foundation in Native American belief.

17. The marriage of Karen Miller and Stephen J. Roy was accomplished in accordance with Native American custom.

18. Mr. Roy and Ms. Miller are raising their children in accordance with Native American tradition and religious beliefs.

19. Renee and Little Bird of the Snow Roy are enrolled on a Native reservation.

20. Little Bird of the Snow was so named during a traditional Indian ceremony performed by Roy and his elder daughter Renee after the birth of Little Bird of the Snow. In this ceremony, Roy and Renee buried Little Bird of the Snow's placenta (so that her "spirit could take root"), said a prayer over it, and named Little Bird of the Snow upon seeing a "sign"—a small goshawk that appeared to emerge from the snow.

21. Little Bird of the Snow Roy was born at the Williamsport Hospital, Williamsport, Pennsylvania on December 28, 1990.

22. Shortly after the birth of Little Bird of the Snow, her mother, Karen Miller, signed an application for a social security number for Little Bird of the Snow which was then submitted to the Social Security Administration by personnel at the hospital. Miller signed the application without Steven Roy's knowledge.

23. Following receipt of the application, the Social Security Administration established a social security number for

Little Bird of the Snow and mailed a social security card for Little Bird of the Snow to Plaintiffs Roy and Miller.

24. When Roy received the social security card for Little Bird of the Snow, he questioned Karen Miller about it and Miller stated that she did not recall signing the application form. Roy and Miller then agreed to and did return the social security card to the Social Security Administration. Roy requested that the Social Security Administration "revoke" the social security number established for Little Bird of the Snow. He was advised that Little Bird of the Snow's social security number would remain "dormant."

25. Little Bird of the Snow's social security number has been provided by the Social Security Administration to the Internal Revenue Service and has been entered in the Social Security Administration's earnings file.

26. To date, no use has been made of Little Bird of the Snow's social security number.

27. Plaintiff Roy sincerely believes that the government's use of the social security number established for Little Bird of the Snow will "rob the spirit" of Little Bird of the Snow and will prevent him from fully "preparing her for greater power."

28. Plaintiff Roy sincerely believes that a social security number is part of a "great evil" as contained in Native American legend.

29. Roy's view is that the great evil—"as described in the legend of Katahdin"—results from the merging together of three different but related evils. One of these evils is the widespread use of computers. Another of these evils is people's casual acceptance of the widespread use of computers. The third evil is the proliferation of weaponry which increasingly employs computer technology, thereby making the use of the weapons to kill people a "sterile" act.

30. Abenaki religious tradition holds that control over one's life is essential to spiritual purity and indispensable to "becoming a holy person."

31. Roy sincerely believes that the decision of whether or not to use a social security number for Little Bird of the Snow must be made by Little Bird of the Snow.

32. Mr. Roy's objection to the use of a Social Security Number for Little Bird of the Snow is consistent with and supported by the religious teachings of Native Americans in general.

33. Roy believes that the establishment of a social security number for Little Bird of the Snow, without more, has not "robbed her spirit," but widespread use of the social security number by the federal or state governments in their computer systems would have that effect.

34. On January 1, 1982, Stephen J. Roy began receiving cash assistance and medical assistance for himself and his two daughters, Renee and Little Bird of the Snow. This assistance was provided by DPW and HHS pursuant to the federal-state programs of Aid to Families with Dependent Children and Medical Assistance to Families with Dependent Children.

35. On April 27, 1982, DPW personnel advised Mr. Roy that he had failed to provide a social security number for Little Bird of the Snow.

36. DPW personnel stated that a social security number is required by federal and state statutes and regulations as a condition of eligibility for assistance for Little Bird of the Snow.

37. Mr. Roy offered to cooperate in finding an alternative to obtaining a social security number for Little Bird of the Snow in order to restore her welfare benefits.

38. DPW personnel refused to consider any alternatives to requiring a social security number for Little Bird of the Snow.

39. Mr. Roy refused to furnish a social security number for Little Bird of the Snow on the ground that doing so would be contrary to his religious belief.

40. On September 17, 1982, Mr. Roy's cash assistance under Aid to Families with Dependent Children was reduced because DPW held Little Bird of the Snow to be ineligible for benefits. Similarly, DPW discontinued medical assistance for Little Bird of the Snow. The sole basis for these actions was Mr. Roy's refusal to furnish a social security number for Little Bird of the Snow.

41. On June 16, 1983, DPW held a hearing on Mr. Roy's appeal from the reduction of cash assistance and discontinuance of medical assistance for Little Bird of the Snow.

42. On July 28, 1983, the DPW Hearing Examiner held that Mr. Roy's refusal to provide a social security number for Little Bird of the Snow was based upon a religious belief which is sincerely held but ordered Mr. Roy's appeal denied and refused to restore the cash assistance or medical assistance for Little Bird of the Snow.

43. DPW affirmed the order of the Hearing Examiner on July 29, 1983.

44. Except for his refusal to provide a social security number for Little Bird of the Snow, Mr. Roy has met all the requirements for eligibility for cash assistance and medical assistance for Little Bird of the Snow at all times since January 1, 1982.

45. Mr. Roy and Ms. Miller continue to refuse to furnish a social security number for Little Bird of the Snow.

46. In September, 1982, Mr. Roy was denied $33 and since October, 1982, Mr. Roy has been denied $66.00 per month as a result of DPW's discontinuance of Little Bird of the Snow from cash assistance.

47. Since September 17, 1982, Mr. Roy has paid $40.50 for medical and dental care for Little Bird of the Snow.

48. If DPW had not discontinued Little Bird of the Snow from medical assistance, these expenses would have been paid by DPW and HHS.

49. Stephen J. Roy and Karen Miller have been receiving Food Stamps from DPW and USDA pursuant to the federal-state program of Food Stamps to low-income households.

50. On or about May 26, 1983, DPW advised Mr. Roy and Ms. Miller that it intends to discontinue food stamps for Little Bird of the Snow because they failed to furnish a social security number for Little Bird of the Snow. DPW personnel asserted that a social security number is required by federal and state statutes and regulations as a condition of eligibility for food stamps for Little Bird of the Snow.

51. Except for their refusal to provide a social security number for Little Bird of the Snow, Mr. Roy and Ms.

Miller meet all the requirements for eligibility for Food Stamps for Little Bird of the Snow.

52. Mr. Roy and Ms. Miller are required to provide their social security numbers as a condition of receiving food stamps for Little Bird of the Snow.

53. Mr. Roy and Ms. Miller provided their own social security numbers when they applied for food stamps for Little Bird of the Snow.

54. Mr. Roy's continued refusal to furnish a social security number for Little Bird of the Snow is based upon sincerely held Abenaki religious beliefs.

55. The government requires a social security number as a condition of receiving welfare benefits in order to prevent fraud.

56. The social security number is an important tool of federal and state agencies to reduce the misdirection of benefits in the food stamp and AFDC programs.

57. Analyses done by HHS and USDA confirm that there exist significant fraud and overpayments in these benefits programs.

58. The error rate for incorrect payments in the AFDC and Food Stamps programs is currently between five and ten percent.

59. Studies by HHS indicate overpayments of $225,000,000 on an annual basis while USDA has estimated that, in fiscal year 1981, $1,000,000 in benefits were attributable to payments to persons ineligible for the program and overpayments to eligible persons.

60. The efficient operation of these programs requires the use of computer systems that utilize unique numerical indentifiers such as the social security number.

61. The social security number has become a very important part of the efforts of states to administer their welfare programs effectively through computerized record systems.

62. Such systems ensure greater accuracy in providing benefits and in reducing fraud in such programs and aid in the coordination of information in various welfare programs to ensure that recipients are not receiving duplicate benefits.

63. Social security numbers are used in making the determination that benefits in the programs are properly paid and that there is no duplication of benefits or failure of payment.

64. Utilization in the computer system of the name of a benefit recipient alone frequently is not sufficient to ensure the proper payment of benefits.

65. Social security numbers provide a basis for differentiating among program recipients with the same or similar names.

66. Social security numbers serve this purpose well because they are unique identifiers.

67. The Social Security system has data on over 393,000,000 accounts.

68. As of October 11, 1983, the computer system had a record of 55,036 persons with the surname Roy and of 32 persons with the name Stephen Roy.

69. The use of computer "cross-matching" can significantly reduce erroneous payments in these programs.

70. Social security numbers are very useful for program cross-matching.

71. Requiring social security numbers for children enhances the agencies' ability to detect non-existent children on the basis of cross-matches with school enrollment and other files.

72. Social security numbers also are helpful in carrying out the WIN (work incentive) and Child Support programs and the work registration and workfare provisions of the food stamp programs.

73. A demonstration of eligibility for food stamps can affect a household's eligibility for benefits in six other nationwide meal programs administered by USDA.

74. Without the provision of social security numbers in these programs, cross-matching would be more difficult to perform.

75. The file on a particular benefit recipient can be identified, and cross-matching performed, if the benefit recipient's full name, date of birth, and parents' names are entered into the computerized systems.

76. Certain computer systems used by the Defendants also allow for the entry of additional information to identify a particular benefit recipient, including the benefit recipient's parents' social security numbers and the recipient's place of birth.

77. The government's interest in preventing Little Bird of the Snow from fraudulently receiving welfare benefits can be satisfied without requiring a social security number for Little Bird of the Snow.

78. Mr. Roy was and is required to provide his own social security number as a condition for receiving the cash grant and medical assistance for Little Bird of the Snow.

79. Mr. Roy agreed to provide his own social security number when he applied for the cash grant and medical assistance for Little Bird of the Snow.

80. Little Bird of the Snow's name and birthdate were entered into the computers which DPW, HHS and USDA use to determine eligibility for welfare benefits.

81. There are no other persons named Little Bird of the Snow Roy or Little Bird of the Snow whose names are in the computer which DPW uses to determine eligibility for welfare benefits.

82. Even if there were other persons in the computer who share her name, information on Little Bird of the Snow could be rapidly located in most if not all of the existing computer systems by searches or comparisons of birthdates and parents' names and addresses.

83. There have been four reported cases involving challenges to the social security number requirement for welfare benefits based upon the contention that the number violates sincerely held religious beliefs of the welfare recipient.

84. Exempting Little Bird of the Snow from the social security number requirement would require no modifications to the Defendants' computer systems, would require at the most some minor extra expenditure of time by the Defendants' employees and would require no discrete financial expenditure.

88. The Defendants' interest in maintaining an efficient and fraud resistant system can be met without requiring use of a social security number for Little Bird of the Snow.

86. As a result of the Defendants' denial of benefits to Little Bird of the Snow, the Plaintiffs and their children have been living at a near-subsistence level.

III. DISCUSSION.

Little Bird of the Snow received her name in a traditional Native American Indian ceremony performed by Plaintiff Roy after the birth of Little Bird of the Snow. In this ceremony, Roy and his elder daughter Renee buried Little Bird of the Snow's placenta (so that her "spirit could take root"), said a prayer over it, and named Little Bird of the Snow upon seeing a "sign"—a small goshawk that appeared to emerge from the snow. Plaintiff Roy believes that Little Bird of the Snow's name is sacred. He also believes that government use of a social security number for Little Bird of the Snow will "rob her spirit."

Upon consideration of the parties' arguments and the evidence presented at trial, we reach the following conclusions. First, this case is not moot as claimed by the Defendants. Second, Roy's objection to use of a social security number for Little Bird of the Snow derives from sincerely held religious beliefs. Third, while the government's interest in requiring individuals to use a social security number is great, that interest is "outweighed" by Roy's rights under the first amendment. Stated otherwise, the governmental interests served by the social security number requirement will not be significantly compromised by exempting Little Bird of the Snow from the requirement in this case.

A. Mootness.

Prior to trial, the parties agreed that Little Bird of the Snow did not have a social security number. *See* Comprehensive Statement of Undisputed Facts (filed May 7, 1984) ¶ 6. On the last day of the trial of this case, however, one of the Defendants' witnesses, an official of the Social Security Administration, determined that Little Bird of the Snow has a social security number. Following this somewhat sur-

prising discovery, the Defendants argued that this case is moot and this Court therefore has no jurisdiction to address the Plaintiffs' claims.

The Defendants contended that the case is moot because the Plaintiffs sought in this suit to avoid the requirement that they provide a social security number for Little Bird of the Snow as a condition of receiving welfare benefits for her but, because a social security number for Little Bird of the Snow already exists, the Plaintiffs can no longer legitimately claim any objection to providing the social security number in order to receive welfare benefits.

The Defendants' argument mischaracterizes the nature of the Plaintiffs' claim. Roy believes that an individual's use of a social security number in modern American society "robs" that individual's spirit and deprives him to some extent of the ability to attain "greater power." He believes that once an individual's social security number is used, the spirit of that individual is robbed and the damage to the individual cannot be undone. Roy testified that he used his social security number before he "became aware"—developed his beliefs—and, as a result, his spirit has been robbed and it would be pointless for him now to object to use of his social security number. Indeed, Roy provides his social security number to the Defendants in connection with his receipt of welfare benefits, as does Plaintiff Karen Miller. The Plaintiffs also provide their daughter Renee's social security number to the Defendants in order to receive welfare benefits for Renee.

Notwithstanding the above, Roy sincerely believes that the spirit of Little Bird of the Snow has not been robbed by the mere establishment of a social security number for her. He further believes that no substantial harm will befall Little Bird of the Snow until her social security number is "used". Likewise, while Roy would prefer that no social security number had ever been established for Little Bird of the Snow, he still feels compelled by his religious belief to avoid any use of that number and, to that end, has refused to provide the number to the Defendants in order to receive welfare benefits for Little Bird of the Snow. The Plaintiffs desire to obtain welfare benefits without the government

using Little Bird of the Snow's social security number in connection with any information maintained by the government regarding Little Bird of the Snow. The Plaintiffs also seek to have Little Bird of the Snow's social security number "expunged" to whatever extent that is possible.

In light of the foregoing, we reject the Defendants' argument that this case is moot.

On June 15, 1994, the federal defendants and Defendant Cohen filed post-trial motions to dismiss this case in which they reiterate their argument that this case is moot and make the related argument that the Plaintiffs are not entitled to injunctive relief because they misrepresented a material fact and therefore have "unclean hands." The Defendants maintain that the Plaintiffs represented that Little Bird of the Snow has no social security number whereas, in fact, she does. We reject this argument for several reasons. The fact that Little Bird of the Snow was assigned a social security number is not material for the same reason that this case is not moot. Plaintiff Roy does not in this lawsuit object to the establishment of a social security number for Little Bird of the Snow but he does object to extensive governmental use of that number and to the requirement that he provide the number to the Defendants in order to obtain benefits for Little Bird of the Snow. Neither the Plaintiffs' complaint nor their statement of material facts submitted with their summary judgment motion states that no social security number has been established for Little Bird of the Snow. Likewise, both the complaint and the statement of material facts make it clear that the Plaintiffs object to providing a social security number for Little Bird of the Snow in order to obtain benefits for her.

The Defendants also point out that the plaintiffs agreed to the "undisputed fact" that Little Bird of the Snow has no social security number. The federal Defendants are equally responsible if not more responsible for this misstatement. The Defendants agreed to the facts contained in the parties' Comprehensive Statement of Undisputed Facts. The federal Defendants had the ability to confirm or deny the "fact" that Little Bird of the Snow had no social security number and they did not do so until the last day of the trial

of this case. It is incredible that the federal Defendants failed to make a simple and quick check of their records to ascertain the existence of the number.

B. Roy's "Religious" Belief.

The Defendants argue that the plaintiffs' objection to the social security number requirement does not derive from any "religious" belief and therefore is not entitled to First Amendment protection. *See United States v. Seeger*, 380 U.S. 163 (1965). The Defendants argue that, although Plaintiff Roy claims that his beliefs derive from his Abenaki Indian background, many of his beliefs are not purely Abenaki beliefs and therefore cannot properly be characterized as religious. For example, the Plaintiffs' expert, Professor Driscoll, testified that many of Roy's beliefs and practices are common to many Native American Indian tribes. We fail to see how the fact that a belief is common to many Native American tribes changes the fact that the belief is an Abenaki religious belief.

The Defendants also argue that the plaintiffs' objection is philosophical rather than religious in nature. The Defendants point out that many individuals object to the widespread use of identifying numbers and that their objections are characterized as philosophical. Nevertheless, Roy traced his objection to the social security number requirement directly to the legend of "Katahdin" which clearly is a part of Native American Indian tradition or "religion." Roy and his expert also testified that Native American Indians do not make a distinction between religion, culture, and what most Americans call "philosophy."

The Defendants also claim that the Plaintiffs' objection to the social security number requirement is not truly religious because it is, for various reasons, irrational. A belief need not be rational in order to be a religious belief entitled to first amendment protection. Thomas vs. Review Board of the Indian Employment Security Division, 450 U.S. 707 (1981). Roy's beliefs are not any more irrational than most religious beliefs. Moreover, after hearing Roy's testimony regarding his objection to the use of the social security number and the beliefs from which that objection derives

followed by the testimony presented by the Defendants' regarding their use of the social security number and extensive reliance on computer technology, we are not convinced that Roy's beliefs are, in fact, irrational. For all of the foregoing reasons, we conclude that the Plaintiffs' objection to use of a social security number for Little Bird of the Snow derives from beliefs that are properly characterized as "religious."

C. The Plaintiffs' Sincerity.

We are persuaded that Plaintiff Roy sincerely holds the religious beliefs that underlie his objection to the social security number requirement. This conclusion is based primarily on our determination that Roy's testimony that he sincerely holds his beliefs is credible. Moreover, Roy testified to numerous objective manifestations of the sincerity of his beliefs including the ceremony in which Little Bird of the Snow was given her name and the Plaintiffs' efforts to raise their children in accordance with Native American Indian tradition. Finally, the fact that Roy has foregone $66.00 per month in cash assistance for Little Bird of the Snow since October 1982, as well as other benefits despite the fact that the Plaintiffs have very little income strongly suggests that they are sincere in their religious beliefs.

The Defendants point to the fact that Roy is not completely "consistent" in his religious practices. Assuming this to be true, it does not change the fact that Roy sincerely holds the religious beliefs that give rise to his objection to the social security number. Roy lives in a modern society with which American Indian tradition is, in many respects, at odds. He does not reject the modern society in which he lives as the Defendants apparently would have him do in order to be entitled to first amendment protection. Roy does attempt to live in this society while maintaining his traditional religious beliefs and practices and he apparently does so with considerable success.

With regard to Plaintiff Karen Miller, because she did not testify at the trial of this case, we are unable to determine whether she sincerely holds religious beliefs identical

or similar to those held by Mr. Roy. Plaintiff Miller does not claim that she has been denied cash assistance for Little Bird of the Snow but she contests Defendants Block and Cohen's threatened termination of food stamps for Little Bird of the Snow. We are hesitant to grant Miller injunctive relief against the threatened termination of food stamps in light of her failure to testify at trial. Nevertheless, it would be inequitable to hold that Plaintiff Roy need not provide a social security number for Little Bird of the Snow while allowing the government to require Miller to provide a social security number for Little Bird of the Snow, thereby effectively denying Roy the relief he seeks. In other words, because Roy and Miller jointly receive food stamps for Little Bird of the Snow, we think that proof that Roy has a sincere religious objection to providing a social security number for Little Bird of the Snow supports an injunction against Defendants Block and Cohen from terminating food stamps for Little Bird of the Snow to the same extent as would a finding that both Plaintiffs hold sincere religious objections to the requirement.

D. The Government's Interest.

There is no question that the government's interest in utilizing computer systems in connection with the payment of welfare benefits is substantial. Likewise, the government's interest in requiring that benefit recipients provide a social security number in order to facilitate accurate and efficient identification of those recipients is substantial. *See* Callahan vs. Woods, slip op. at 9-10, No. 83-1589 (9th Cir. March 30, 1984). Use of the social security number in connection with the various welfare programs enhances the programs' efficiency and helps to reduce the tremendous problem of misspayment of benefits by the agencies involved.

E. Resolution of the Conflict Between the Parties' Interests.

1. The Appropriate Test.

The parties dispute the standard by which this Court is to determine whether the Plaintiffs' interest in acting in accordance with their religious beliefs by refusing to provide

a social security number in order to receive welfare benefits is superior to the government's interest in requiring all welfare benefit recipients to provide a social security number. In our May 15, 1984, opinion on the parties' summary judgment motions, we relied primarily on the decision of the Court of Appeals for the Ninth Circuit in Callahan vs. Woods, No. 80-1689 (March 30, 1984) in which the Court of Appeals employed the "compelling state interest—least restrictive alternative" test. The Defendants maintain that the standard that should be used in deciding this case is not the compelling interest—least restrictive alternative test, but a "weighing" or "balancing" test. The parties also dispute just what interests are to be considered in determining the outcome of the case.

The Plaintiffs advocate strict adherence to the least restrictive alternative test. In other words, unless the government can show that its interests cannot be served by any means less restrictive of the Plaintiffs' first amendment rights, the Plaintiffs should prevail. We reject this analysis because we do not believe that the Plaintiffs should prevail if some "less restrictive alternative" is available to the government that would involve an unreasonable cost. In our May 15, 1984, opinion we held that the Plaintiffs could prevail on their free exercise claim only if they could show that the governmental interests served by the social security number requirement could be served by some reasonable alternative means which would not burden the Plaintiffs' first amendment rights. In other words, if holding that the Plaintiffs' objection to the social security number requirement entitles them to an exemption from the requirement would substantially burden the benefit programs involved in this case by, for example, involving a cost so great that the efficient operation of the programs would be affected or by creating a substantial likelihood of chaos in the system resulting from a proliferation of claims to exemptions from the requirement, then the governments' interest should be held superior to the Plaintiffs' right to exercise their religious beliefs.

The Defendants argue that so long as the government's interest in maintaining the social security number require-

ment is "weighty" enough, the Defendants must prevail. The Defendants argue that the government's general interest in maintaining the social security number requirement is all that need be considered and the government's interest in maintaining the requirement in this particular case is, in effect, not relevant. Likewise, the Defendants maintain that the government should prevail in this case because it has a substantial interest in uniform enforcement of the social security number requirement and that granting an exception to the requirement in this case will adversely impact the government's substantial interest in maintaining uniformity. We reject this argument as well because it would effectively guarantee victory for the government in every case. It is obvious that the government has a strong interest in uniform enforcement of all laws and regulations. The analysis advocated by the Defendants is inconsistent with the First Amendment's requirement that exceptions to an otherwise uniformly enforced law be made in those exceptional cases where the law conflicts with an individual's sincerely held religious beliefs. See Callahan vs. Woods, slip op. at 5-6, No. 83-1668 (9th Cir. March 30, 1984).

The Defendants rely on the case of U.S. vs. Lee, 455 U.S. 252 (1982) in support of their argument that the Plaintiffs' claim in this case must fail because it would adversely impact the government's interest in uniform enforcement of the social security number requirement. In *Lee*, the Supreme Court held that a member of the Amish faith was not entitled to an exemption from the requirement that he pay social security taxes required of employers on the basis that payment of those taxes was contrary to his sincerely held religious beliefs. *Lee* is distinguishable from this case in at least two respects. First, the harm to the government that would have resulted from Lee's non-payment of social security taxes would have been immediate in that the funds available for payment of benefits by the Social Security Administration would be reduced whereas in this case any harm to the government resulting from Plaintiffs not providing a social security number for Little Bird of the Snow is, as will be discussed shortly, speculative only. Also, the

Court in *Lee* apparently relied upon the apparent possibility of a tremendous number of claims of religious based objection to payment of taxes creating chaos in the tax system. In this case, as will be discussed below, the Defendants have not shown that there is any likelihood that more than a handful of individuals object on the basis of sincerely held religious beliefs to the social security number requirement challenged in this case. Finally, Justice Stevens suggests in a concurring opinion in *Lee* that the unarticulated standard used to decide that case actually imposes an almost insurmountable burden on a plaintiff in a free exercise case but that such a standard has not been applied in those cases involving a "law intended to provide a benefit to a limited class of otherwise disadvantaged persons," such as laws providing for unemployment compensation. *Lee*, 455 U.S. at ____ n.2. Such is the situation in this case.

2. Application of the Test to this Case.

In light of the foregoing, we will consider this case under the reasonable less restrictive alternative standard articulated in our opinion on the parties' motion for summary judgment and explicated in this opinion. Under that standard, we will consider the Plaintiffs' interests as against the government's interest in this particular case as well as the government's interest in the social security number requirement as a general matter.

As noted above, the government's general interest in maintaining the social security number requirement is great. However, that interest does not appear to be threatened by the claim presented in this case because the Plaintiffs' claim appears to be extremely unusual. We are not aware of more than four reported challenges to the social security number requirement. The Defendants presented no evidence that requests for exemption from the requirement have been made by persons other than those involved in the four reported cases. The Defendants have presented no evidence that any more than a handful of people have religious beliefs that would result in a request for an exemption from the social security number requirement. Thus, the Government's general interest in enforcement of the so-

cial security number requirement would not appear to be threatened by a holding in favor of the Plaintiffs in this case. We note also that even though virtually all benefit recipients provide their social security numbers to the Defendants, five to ten percent of all payments made under the benefit programs are made in error. As discussed above, we reject the government's argument that the Plaintiffs cannot prevail because the grant of any exception to the social security number requirement is impermissible.

The government's interest in avoiding a grant of an exemption to the social security number requirement to the Plaintiffs in this case is very small. As appears from our findings, the Defendants did not produce any evidence that the grant of such an exemption will require any discrete expenditure of funds or substantial commitment of personnel time. Indeed, the Defendants never pointed out any specific concrete harm that would result if the Plaintiffs prevailed in this case. The testimony presented by the Defendants' witnesses on this question was vague. The Defendants failed to present any evidence regarding the costs incurred or problems encountered by the government following Judge Weinstein's decision in Stephens vs. Berger, 428 F.Supp. 896 (E.D. N.Y. 1977) in which he ordered the government to pay welfare benefits to the Plaintiffs in that case despite their refusal to provide social security numbers. The Defendants also presented no evidence that any harm had resulted from the Defendants' provision of benefits for Little Bird of the Snow in 1982 when the Plaintiffs provided no social security number for her.

It appears to the Court that the harm that the Government might suffer if the Plaintiffs prevailed in this case would be, at worst, that one or perhaps a few individuals could fraudulently obtain welfare benefits. Such a result would obtain only if (1) Little Bird of the Snow attempted fraudulently to obtain welfare benefits or someone else attempted fraudulently to obtain such benefits using Little Bird of the Snow's name and (2) identification procedures available to the Defendants that do not require utilization of a social security number failed to expose the fraud. This possibility appears to the Court to be remote.

The government witnesses contend that the social security number requirement is essential because the social security number is relied upon in comparing files of welfare recipients through computer "cross-matching" programs. These witnesses did not testify, however, that cross-matching could not be performed (and welfare fraud thereby discovered and deterred) without the use of the social security number except in one unusual situation discussed below. Rather, these witnesses testified that cross-matching could be performed but any match between files identified by the computer would be accorded less "weight" than a match involving two files containing identical social security numbers. In other words, if the computer discovered two applications for welfare benefits by an individual with a certain name, absent a social security number or some other identifier, a match would be obtained but would not definitively establish that one applicant is the same as the other, i.e., that fraud was involved. If this problem arises, the government might be faced with a need to perform additional clerical work in order to determine whether the two applicants are indeed the same.

Contrary to the government's implication, the social security number is not essential to avoid the problem alluded to in the preceding paragraph. An applicant for benefits under the programs involved in this case is required to submit not only his name and his social security number but several other identifying factors such as date of birth. Effective cross-matching can be performed on the computer systems currently used by the Defendants when several identifying factors for a particular applicant are typed into the computer, even absent the social security number. Moreover, in this particular case, the Defendants presented no evidence that there was anybody else in the United States with the name Little Bird of the Snow or that any person using the name Little Bird of the Snow (other than Little Bird of the Snow Roy) has applied for welfare benefits.

The only instance of which we are aware in which an individual's failure to provide a social security number might render cross-matching impossible is in the interstate con-

text. Witnesses for the Defendants testified that this is so because different states use different formats for entering people's names into their computer system whereas the social security number is used nationwide and is always a nine digit number. We are not persuaded that cross-matching would be impossible in the interstate context without the social security number. In any event, assuming that such cross-matching is impossible, the possibility that Little Bird of the Snow or some other individual could fraudulently obtain welfare benefits in two different states or in some other interstate context as a result of exempting Little Bird of the Snow from the social security number requirement in this case is extremely remote.

For all of the foregoing reasons, we conclude that the Plaintiffs' objection to use of a social security number for Little Bird of the Snow is protected under the first amendment such that the Plaintiffs are entitled to an exemption from the social security number requirement.

F. Relief.

The Plaintiffs seek the following relief. First, they seek an order requiring Defendant Cohen or Defendant Heckler or both to pay to the Plaintiffs the benefits withheld from the Plaintiffs in violation of their first amendment rights. Second, they seek an order enjoining all of the Defendants from denying benefits to the Plaintiffs for Little Bird of the Snow for failure to provide a social security number. Third, they seek an award of damages against Defendants Cohen and Heckler, in their individual capacities, for injuries caused as a result of their infringement of the Plaintiffs' constitutional rights. Fourth, they seek an order requiring Defendant Heckler in effect to eliminate any reference to or use of the social security number previously established for Little Bird of the Snow. Finally, they seek an award of costs and attorney's fees.

We will grant the Plaintiffs part of the injunctive relief they seek. We will enjoin the defendants from denying benefits to the Plaintiffs for Little Bird of the Snow because of the Plaintiffs' failure to provide a social security number for Little Bird of the Snow. Because the Plaintiffs have se-

serted that they have no present religious objection to the mere past establishment of a social security number for Little Bird of the Snow, we will deny their request that that number be "eliminated".

We will also enjoin Defendant Heckler from using or disseminating the social security number already established for Little Bird of the Snow. We recognize that Defendant Heckler has already provided the number to the Internal Revenue Service and that that single instance of dissemination of the number cannot be undone by any order in this case. Nevertheless, Roy objects to widespread governmental use of the number which, according to Roy's testimony, has not yet occurred.

The Plaintiffs request that any injunction(s) granted them by the Court not be limited in time. Alternatively, in response to the Defendants' concern that the Government's interest in requiring Little Bird of the Snow to use a social security number will be far greater when Little Bird of the Snow reaches age 16 than at present, the Plaintiffs request that any injunctions extend until Little Bird of the Snow's 16th birthday. We will order that the injunction extend only to Little Bird of the Snow's 16th birthday.

With regard to the Plaintiffs' request for damages, we are not aware of any authority for the relief requested by the Plaintiffs. As discussed in our prior opinion in this case, an award of damages against Defendant Cohen is barred by the Eleventh Amendment guarantee of sovereign immunity to the states. *See* Edelman vs. Jordan, 415 U.S. 651 (1974). With regard to an award of damages against Defendant Heckler, we are not persuaded by the authorities cited by the Plaintiffs that we have the authority to grant such an award. Moreover, even assuming that such power exists, it appears that Defendant Heckler is immune from the Plaintiffs' claim for damages because her conduct did not "violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow vs. Fitzgerald, 457 U.S. 800 (1982). Finally, we reject the Plaintiffs' assertion that the Defendants should be held liable in their individual capacities for their action in withholding benefits to the Plaintiffs. The Defendants acted

pursuant to a clearly-expressed statutory requirement and we therefore see no basis for holding them individually liable. Although we have concluded that we lack the power to award to the Plaintiffs the withheld benefits, we reach this conclusion reluctantly in that the Plaintiffs were entitled to and therefore arguably should receive the benefits that were withheld between October 1982 and the present.

We will reserve decision on the Plaintiffs' request for attorney's fees until such time as the Plaintiffs submit a motion for attorney's fees which conforms to the requirements of the Court of Appeals and as set forth in the practice order issued in this case. We express no view as to the merit of such a request.

IV. Conclusions Of Law.

1. The Plaintiffs' refusal to provide a social security number for Little Bird of the Snow is based upon a religious belief.

2. Roy's religious belief is sincerely held.

3. By requiring Roy to violate his religious beliefs as a condition of receiving welfare benefits, the Defendants place a substantial burden upon Roy's free exercise of his religion.

4. The Defendants' interests can be satisfied by reasonable less restrictive means which do not infringe upon Roy's religious beliefs.

5. The Defendants' denial of cash assistance and medical assistance, and threatened denial of food stamps for Little Bird of the Snow violate Roy's rights under the First, Fifth and Fourteenth Amendments to the United States Constitution.

An appropriate order will be entered.

/s/ Muir

MUIR, U.S. District Judge

DATED: JUNE 22, 1984

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 93-1179
Complaint Filed 6/17/93
(Judge Muir)

STEPHEN J. ROY AND KAREN MILLER, PLAINTIFFS

v.

WALTER COHEN, ET AL., DEFENDANTS

(June 22, 1994)

ORDER

1. Defendants Walter Cohen and Margaret Heckler, in their official and individual capacities, their successors, agents and employees and all persons acting in concert with them, are restrained until December 26, 1996 from denying Plaintiff Roy cash assistance and medical assistance benefits for Little Bird of the Snow for the Plaintiffs' failure to provide a social security number for her.

2. Defendants Walter Cohen and John Block, acting in their official and individual capacities, their successors, agents and employees and all persons acting in concert with them, are restrained until December 26, 1996 from refusing to provide food stamps for Little Bird of the Snow for the Plaintiff's failure to provide a social security number for her.

3. Defendant Margaret Heckler, acting in her official and individual capacities, is permanently restrained from making any use of the social security number which was issued in the name of Little Bird of the Snow Roy and from disseminating the number to any agency, individual, business entity or any other third party. Defendant Heckler is ordered to notify any agency, individual, business entity or

other third party to which the number has been provided and demand that said agency permanently refrain from: (1) making any use of the number and (2) disseminating the number to any other agency, person, individual, business entity, or any other third party.

4. The Defendants' June 15, 1984 motions to dismiss this case are denied.

5. The Clerk of Court shall enter judgment for Plaintiffs with respect to their requests that the Defendants be enjoined from refusing to provide benefits for Little Bird of the Snow until her 16th birthday because of the Plaintiffs' refusal to provide a social security number for her and that Defendant Heckler be enjoined from disseminating the number. The Clerk of Court shall enter judgment in favor of the Defendants with respect to all other claims made by the Plaintiffs.

/s/ Muir
MUIR, U.S. District Judge

DATED: June 22, 1984

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DIST. OF PA.

CV. 83-1179
Judge Malcolm Muir

STEPHEN J. ROY AND KAREN MILLER

v.

WALTER COHEN, ET AL.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court with the judge named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

That Judgment is entered in favor of the Plaintiffs Stephen J. Roy and Karen Miller and against Walter Cohen, et al., with respect to their requests that the Defendants be enjoined from refusing to provide benefits for Little Bird of the Snow until her 16th birthday because of the Plaintiffs' refusal to provide a social security number for her and that Defendant Heckler be enjoined from disseminating the number;

That Judgment is entered in favor of the Defendants Walter Cohen, et al., with respect to all other claims made by the Plaintiffs Stephen J. Roy and Karen Miller.

/s/ Donald R. Berry
DONALD R. BERRY,
Clerk

/s/ Sylvia Lehotsky
SYLVIA LEHOTSKY
Deputy Clerk

JUNE 22, 1984

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 83-1179
Complaint Filed 8/17/83
(Judge Muir)

STEPHEN J. ROY AND KAREN MILLER, PLAINTIFFS

v.

WAYNE COHEN, SECRETARY OF THE PA. DEPT. OF PUBLIC WELFARE; ET AL., DEFENDANTS

[May 15, 1984]

OPINION

MUIR, District Judge.

Stephen J. Roy and Karen Miller have refused to obtain a social security number for their two-year-old daughter, Little Bird of the Snow, on the ground that doing so would be contrary to their Native Abenaki Indian religious beliefs. As a result, the Defendants have terminated cash assistance and medical assistance benefits for Little Bird of the Snow payable to the Plaintiffs. They have also initiated proceedings to discontinue food stamps for Little Bird of the Snow. In this lawsuit, the Plaintiffs assert that the Defendants' failure to pay them welfare benefits to which they would be entitled but for their failure to obtain a social security number for Little Bird of the Snow constitutes a violation of their first amendment right to free exercise of their religion. Defendant Walter Cohen is the Secretary of the Pennsylvania Department of Public Welfare (DPW). Defendant Margaret Heckler is the Secretary of the United States Department of Health and Human Services and Defendant John Block is the Secretary of the United States Department of Agriculture. Defendants Heckler and Block will be hereinafter referred to as the federal defendants.

Presently before the Court are motions for summary judgment filed by the Plaintiffs, the federal Defendants, and Defendant Cohen.

The following facts set forth by the Plaintiffs in the "Statement of Material Facts ..." which they filed with their summary judgment motion are not disputed by the Defendants. Plaintiff Roy is a Native Abenaki Indian. Roy and Plaintiff Karen Miller were married in accordance with native Abenaki custom. The Plaintiffs have two children, Renee, age 5, and Little Bird of the Snow, age 2.

Defendant Heckler is responsible for the administration of the Aid to Families with Dependent Children, see 42 U.S.C. §§ 601-615, and Medical Assistance, see 42 U.S.C. § 1396, programs. Defendant Block is responsible for the administration of the food stamps program. See 7 U.S.C. §§ 2011-2027. Both of these programs are jointly administered by the federal and state governments. Defendant Cohen is responsible for the administration in Pennsylvania of these programs. Households participating in the Aid to Families with Dependent Children and food stamp programs are required to furnish social security numbers for each member of the household in order to participate in the programs. 42 U.S.C. § 602(a)(25); 7 U.S.C. § 2025(e).

In January 1982, the Pennsylvania Department of Public Welfare and the Department of Health and Human Services began providing to Plaintiff Roy cash assistance and medical assistance benefits for Roy and his two daughters pursuant to the Aid to Families with Dependent Children and medical assistance programs. In April 1982, the DPW advised Roy that he had failed to provide a social security number for Little Bird of the Snow as required by federal and state law. Mr. Roy refused to provide a social security number for Little Bird of the Snow. He alleges that his refusal is based on his sincerely held native Abenaki religious beliefs. As a result of Roy's refusal to obtain a social security number for Little Bird of the Snow, the DPW reduced the amount of cash assistance to Roy under the AFDC program in September 1982. It also discontinued medical assistance benefits for Little Bird of the Snow.

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In June 1983, the DFW held a hearing on Roy's appeal from the DFW's reduction of these benefits. The DFW determined that Roy's refusal to provide a social security number for Little Bird of the Snow is based on a sincerely held religious belief but denied his appeal and refused to restore cash or medical assistance benefits for Little Bird of the Snow. As a result of DFW's discontinuance of these benefits, Mr. Roy was denied $33.00 in September 1982 and, since October 1982, Roy has been denied $66.00 per month. Mr. Roy likewise has not received reimbursement for $20.00 in medical expenses for Little Bird of the Snow.

The Plaintiffs have been receiving food stamps from the DFW and the Department of Agriculture. In May 1983, DFW advised the Plaintiffs that it intended to discontinue food stamps for Little Bird of the Snow because of the Plaintiffs' failure to provide a social security number for Little Bird of the Snow.

DISCUSSION

Several Courts have addressed claims virtually identical to the Plaintiffs' claim in this case. See, e.g., Callahan vs. Woods, No. 83-1688 (9th Cir. March 30, 1984); Stevens vs. Berger, 428 F. Supp. 896 (E.D. N.Y. 1977); Mullaney vs. Woods, 150 Cal. Rptr. 902 (1979). Consequently, we discuss only briefly the statutory schemes and legal standards involved in this case.

In order to prevail on their claim that the social security number requirement impermissibly interferes with their first amendment right to free exercise of their religion, the Plaintiffs must show that their refusal to provide a social security number for Little Bird of the Snow is based on a sincerely held belief properly characterized as "religious". United States vs. Seeger, 380 U.S. 163 (1965). The Plaintiffs must also show that the requirement that they obtain a social security number in order to obtain benefits for Little Bird of the Snow substantially interferes with the free exercise of their religious beliefs. Callahan vs. Woods, No. 83-1688, slip op. at 8 (9th Cir. 3/30/84). Assuming that the Plaintiffs can prove the above, the burden then shifts to the Government to prove that the social security number re-

quirement is necessary to promote a compelling governmental interest which cannot reasonably be satisfied by any "less restrictive alternative," *i.e.*, that the interest served by maintaining the social security number requirement cannot be reasonably served by some other means which would not interfere with the Plaintiffs' free exercise of their religious belief. *Id.* at 5-6.

1. Sincerely Held Religious Belief.

In support of their motion for summary judgment on this issue, the Plaintiffs point to the fact that the Pennsylvania Department of Public Welfare found that Mr. Roy's refusal to obtain a social security number for Little Bird of the Snow was based on a sincerely held religious belief. The Plaintiffs also claim that the Defendants have not presented any affidavits or other evidence to rebut the Plaintiffs' claim that they are acting on the basis of a sincerely held religious belief.

Despite the above, we decline to grant summary judgment for the Plaintiffs on this issue. The conclusion of the Pennsylvania Department of Public Welfare is not binding on this Court in this action and is at best only mildly persuasive. While we agree with the Plaintiffs that they have presented substantial evidence tending to establish that their actions are based on a sincerely held religious belief and the Defendants have presented no evidence to contradict that claim, the Court is of the view that this issue may properly be determined only after a hearing.

Our decision that the Plaintiffs are not entitled to summary judgment on the issue of whether their belief is religious and sincerely held forecloses summary judgment for the Plaintiffs on their claim. The Plaintiffs may nevertheless be entitled to summary judgment on the other issues relevant to their claim. We will discuss these issues in the context of the federal Defendants' motion for summary judgment.

In ruling on the federal Defendants' motion for summary judgment, we assume that the Plaintiffs' actions are based on a sincerely held religious belief. The questions that remain are whether the social security number requirement substantially burdens the Plaintiffs' free exercise of their

religious belief, whether the governmental interests promoted by the social security number requirement are "compelling" and whether those governmental interests might be served by some alternative means which would not burden the Plaintiffs' exercise of their first amendment right.

The social security number requirement apparently constitutes a substantial burden on the Plaintiffs' free exercise of religion. Callahan vs. Woods, No. 83-1698, slip op. at 7-8 (9th Cir. 3/30/84). The fact that the burden on the Plaintiffs is "indirect" does not alter this conclusion:

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.

Thomas vs. Review Board of the Indiana Employment Security Division, 450 U.S. 707, 717-18 (1981).

The next issue is whether the social security number requirement furthers a "compelling" governmental interest. The federal Defendants assert that the social security number requirement serves the government's interests in promoting the efficient operation of various complex nationwide benefit programs and in preventing individuals from fraudulently obtaining benefits under these programs. The Plaintiffs do not deny that the requirement serves these interests; rather, they argue that these interests are not compelling.

The several courts which have addressed the issue of whether these interests are "compelling" have reached different results. In Callahan vs. Woods, No. 83-1698 (9th Cir. March 30, 1984), the Court held that the social security number regulation promotes a compelling state interest. In Mullaney vs. Woods, 97 Cal. App. 3d 710, 158 Cal. Rptr. 902 (3d Dist. 1979), the California Court of Appeals reached the same result in a two to one decision. In Stevens vs. Berger, 426 F. Supp. 896 (E.D. N.Y. 1977), the eminent

Judge Weinstein held that the social security number requirement did not promote a compelling governmental interest.

Despite the existence of the above cases and the substantial body of case law addressed to the question of which governmental interests are "compelling" for purposes of constitutional analysis, it does not appear to the Court that there is any clear answer to the question of whether the governmental interests involved in this case are compelling. We note that the parties in this case, as well as some of the authorities cited above, sometimes fail to distinguish between the question of whether the governmental interest spoken of should be considered "compelling" as a general matter and the question of whether the interest should be deemed "compelling" when considered vis a vis the constitutional right asserted by the party challenging the law or regulation it serves. In our view, the former inquiry is the proper one. To hold that a particular governmental interest is compelling does not preclude a decision that that interest must yield to an individual's constitutional right if the governmental interest may be served by some reasonable less restrictive alternative. *See* Callahan vs. Woods, No. 83-1666, slip op. at 8 (9th Cir. March 30, 1984). Thus, the determination of whether a governmental interest is compelling must be made independent of the determination as to the constitutionally required balance between the interests of the government and the constitutional right of the individual.

We conclude that the government's interest in maintaining the social security number requirement to promote efficiency in the numerous benefit programs in which the number is used and to prevent individuals from fraudulently obtaining benefits under these programs is compelling. As noted above, this conclusion does not depend upon, nor does it dictate the answer to the question of whether an exception to the social security number requirement must be made in an exceptional case, such as is allegedly presented here, where an individual claims that the requirement interferes with his first amendment right. We hold only that, as a general matter and without regard to

any exceptional cases, the social security number requirement promotes compelling governmental interests.

Having reached the above conclusion, we now turn to the question of whether the interests served by the social security number requirement may not be served by some reasonable alternative means which would not burden the Plaintiffs' first amendment rights. If such reasonable alternative means exists, the social security number requirement must yield to the Plaintiffs' first amendment right. Callahan vs. Woods, No. 83-1668 (9th Cir. March 30, 1984), *supra*. The federal Defendants have submitted statements executed by Harris G. Factor, Philip Harnet, and Virgil Conrad, all of whom are officials of the Department of Health and Human Services and Department of Agriculture familiar with the use of social security numbers in the benefit programs administered by these departments. The Defendants have submitted these affidavits to support the proposition that it would be impossible, or at least impractical, to utilize any identifier other than a social security number for the purposes for which social security numbers currently are employed. The Plaintiffs have not submitted any affidavit or other evidence to controvert the Defendants' allegation that no less restrictive alternative to the social security number requirement exists. However, the Plaintiffs argue that the evidence submitted by the federal Defendants does not establish that it would be impossible or impractical to exempt the Plaintiffs from the social security number requirement. The Plaintiffs point out that the Defendants do not maintain that it would be impossible or impractical to exempt the Plaintiffs from the social security number requirement; rather, the Defendants argue that development of an alternative to the social security number on a system-wide basis would be extremely expensive and time-consuming.

Finally, the Defendants argue that if an exception to the social security number requirement were made for the Plaintiffs, the Defendants would be faced with an avalanche of requests for exemption from the social security number requirement on religious grounds. The Plaintiffs point out that the Defendants have failed to present evidence that

more than a handful of welfare benefit recipients seek exemption from the social security number requirement. Hence, the Defendants "avalanche" argument does not support their motion for summary judgment.

We agree with the Plaintiffs that the federal Defendants have not presented evidence sufficient to establish conclusively that it would be impossible to serve the Government's interest by some reasonable means other than use of the social security number. The Defendants' argument that exempting the Plaintiffs from the social security number requirement would eliminate uniformity in the system and impose some burden on the Defendants does not establish that it would be impossible or even difficult to use some identifier for Little Bird of the Snow other than a social security number without compromising the government's interest in maintaining a generally efficient and fraud-resistant system. In addition, as was the case in Callahan vs. Woods, No. 83-1668 (9th Cir. March 30, 1984) the Defendants in this case have not presented any evidence regarding the costs which might be incurred by the government if exceptions are made to the social security number requirement. Callahan, slip op. at 18, footnote 4.

In the light of the foregoing, we will deny the federal Defendants' motion for summary judgment.

We turn now to Defendant Cohen's motion for summary judgment. Because Cohen is required by federal law to enforce the social security number requirement, he relies on the arguments presented by the federal Defendants with respect to the Plaintiffs' first amendment claim. To the extent that Cohen's motion relies on the arguments presented by the federal Defendants, we will deny his motion for the reasons discussed above.

Cohen also argues that because the Plaintiffs seek a retroactive award of damages in this case, their suit against Cohen in this Court is barred by the eleventh amendment guarantee of sovereign immunity to the states. *See* Edelman vs. Jordan, 415 U.S. 651 (1974). We agree with Cohen that he is a nominal defendant only and that the Plaintiffs seek, in effect, an award of damages against the state itself. *See id.* at 668.

The Plaintiffs maintain that Cohen has waived his eleventh amendment immunity as a result of an exchange of letters in March 1980 between Plaintiffs' counsel and a representative of the Pennsylvania DPW. In the course of that correspondence, Mr. Roy's attorney indicated that he agreed to a remand of Mr. Roy's claim against the DPW on the understanding that "he will be awarded retroactive benefits if he should ultimately prevail." At the time of this correspondence, Roy was engaged in litigation in a Pennsylvania state court on which the eleventh amendment has no effect. Mr. Roy was not at that time involved in litigation in federal court nor had he indicated that he would bring a claim against Cohen in federal court. Consequently, we agree with Cohen that there is no evidence of any "clear declaration" that he intended to waive his eleventh amendment immunity and he therefore did not waive that immunity. Edelman vs. Jordan, 415 U.S. 651, 673 (1974).

The Plaintiffs in this action also seek an injunction barring Cohen from refusing to provide benefits to the Plaintiffs allegedly in violation of their first amendment rights. The Plaintiffs' claim for prospective injunctive relief is not barred by the eleventh amendment. *Edelman*, 415 U.S. at 664. Consequently, we will grant Cohen's motion for summary judgment on those counts in the complaint seeking a retroactive award of benefits and will deny Cohen's motion for summary judgment on the counts seeking injunctive or other equitable relief.

The Plaintiffs have also filed an alternative motion for a preliminary injunction. Because this case has been rescheduled for trial at the top of the Court's May, 1984 trial list, and is the next case to be tried, we will consolidate the hearing on the Plaintiffs' motion for preliminary injunctive relief with the trial of this case on the merits. *See* Fed.R.Civ. Pro. 65(a)(2).

An appropriate order will be entered.

/s/ Muir
MUIR, U.S. District Judge

DATED: MAY 15, 1984

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 83-1179
Complaint Filed 6/17/83
(Judge Muir)

STEPHEN J. ROY AND KAREN MILLER, PLAINTIFFS

v.

WALTER COHEN, ET AL., DEFENDANTS

ORDER

1. The Plaintiffs' motion for summary judgment is denied.

2. The federal Defendants' motion for summary judgment is denied.

3. Defendant Cohen's motion for summary judgment is granted as to those counts in the complaint wherein Plaintiffs seek a retroactive award of benefits and denied in all other respects.

4. The hearing on the Plaintiffs' motion for a preliminary injunction will be consolidated with the trial of this action.

/s/ Muir
MUIR, U.S. District Judge

DATED: May 15, 1984

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 83-1179

STEPHEN J. ROY AND KAREN MILLER, PLAINTIFFS

v.

WALTER COHEN, ET AL., DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN this 17th day of July, 1984, that Defendants Margaret Heckler, Secretary of the Department of Health and Human Services, and John Block, Secretary of Agriculture, hereby appeal to the Supreme Court of the United States from the judgment of this Court entered on the 22nd day of June, 1984 in favor of Plaintiffs and against said Defendants, entering judgment in favor of Plaintiffs and granting Plaintiffs' request for injunctive relief.

This appeal is taken pursuant to Title 28 United States Code, Section 1252.

Respectfully submitted,

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DATED: JULY 17, 1984
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